

**FILED UNDER SEAL**

**BATHAE DUNNE LLP**  
Yavar Bathae (CA 282388)  
yavar@bathaeedunne.com  
Andrew C. Wolinsky (CA 345965)  
awolinsky@bathaeedunne.com  
445 Park Avenue, 9th Floor  
New York, NY 10022  
Tel.: (332) 322-8835

Brian J. Dunne (CA 275689)  
bdunne@bathaeedunne.com  
Edward M. Grauman (*pro hac vice*)  
egrauman@bathaeedunne.com  
901 South MoPac Expressway  
Barton Oaks Plaza I, Suite 300  
Austin, TX 78746  
Tel.: (213) 462-2772

(Additional counsel on signature page)

*Interim Co-Lead Counsel for the  
Advertiser Classes*

**SCOTT+SCOTT ATTORNEYS AT LAW LLP**  
Amanda F. Lawrence (*pro hac vice*)  
alawrence@scott-scott.com  
Patrick J. McGahan (*pro hac vice*)  
pmcgahan@scott-scott.com  
Michael P. Srodoski (*pro hac vice*)  
msrodoski@scott-scott.com  
156 South Main Street, P.O. Box 192  
Colchester, CT 06415  
Tel.: (860) 537-5537

Patrick J. Coughlin (CA 111070)  
pcoughlin@scott-scott.com  
Carmen A. Medici  
cmedici@scott-scott.com  
Hal D. Cunningham (CA 243048)  
hcunningham@scott-scott.com  
Daniel J. Brockwell (CA 335983)  
dbrockwell@scott-scott.com  
600 W. Broadway, Suite 3300  
San Diego, CA 92101  
Tel.: (619) 233-4565

(Additional counsel on signature page)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC.,

Defendant.

Case No. 3:20-cv-08570-JD

Hon. James Donato

**ADVERTISER PLAINTIFFS' NOTICE OF  
MOTION AND MOTION TO EXCLUDE  
OPINION TESTIMONY OF DR.  
GEORGIOS ZERVAS**

Hearing Date: June 20, 2024

Hearing Time: 10:00 a.m.

Courtroom 11, 19th Floor

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**NOTICE OF MOTION AND MOTION TO EXCLUDE  
OPINION TESTIMONY OF DR. GEORGIOS ZERVAS**

PLEASE TAKE NOTICE that on June 20, 2024, at 10:00 a.m., before the Honorable James Donato, of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California, Courtroom 11, 19th Floor, Advertiser Plaintiffs Affilious, Inc., Jessyca Frederick, Mark Berney, 406 Property Services, PLLC, Mark Young, and Katherine Looper, on behalf of themselves and all others similarly situated, will and now do move the Court for an order excluding paragraphs 12 and 66-69 of the Advertiser Merits Rebuttal Report of Georgios Zervas, Ph.D. and related testimony.

This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, all filed supporting declarations and exhibits, the records, pleadings, and other documents on file in this consolidated action, and any argument that may be presented at or before the hearing on this Motion.

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**FILED UNDER SEAL****PRELIMINARY STATEMENT**

Advertiser Plaintiffs respectfully move to exclude certain testimony from one of Defendant Meta Platforms, Inc.'s ("Facebook") experts, Dr. Georgios Zervas, as failing every subpart of the Rule 702 standard. Dr. Zervas—retained by Facebook as a rebuttal expert on, among other things, the technical details and economic impact of Facebook's "In-App Action Panel" (IAAP) program to wiretap its competitors, including Snapchat—offered opinions regarding Facebook product design that had no basis in Dr. Zervas's expertise or specialized knowledge. [REDACTED]

[REDACTED] Based on no specialized knowledge or experience and lacking even the most basic indicia of reliability, Dr. Zervas's opinions regarding Facebook product design, which appear at paragraphs 12 and 66-69 of his merits rebuttal report, should be excluded under *Daubert* (along with any related testimony).

**BACKGROUND<sup>1</sup>****A. The IAAP Program and Advertiser Plaintiffs' Expert Analysis**

On January 12, 2024, Advertiser Plaintiffs served four merits expert reports in this consolidated antitrust litigation: the Expert Merits Report of Markus Jakobsson, Ph.D.,<sup>2</sup> the Expert Merits Report of Tilman Klumpp, Ph.D.,<sup>3</sup> the Expert Merits Report of Michael A. Williams, Ph.D., and the Expert Merits Report of Kevin Kreitzman. On February 12, 2024, these same experts, including Dr. Jakobsson<sup>4</sup> and Prof. Klumpp,<sup>5</sup> served rebuttal merits expert reports. As relevant to this motion, the Jakobsson Report and the Klumpp Report set forth expert opinions regarding Facebook's so-called "In-App Action Panel" (IAAP) program, [REDACTED]

<sup>1</sup> All exhibits are attached to the Declaration of Brian J. Dunne ("Dunne Dec.").

<sup>2</sup> Ex. 1 ("Jakobsson Rpt.").

<sup>3</sup> Ex. 2 ("Klumpp Rpt.").

<sup>4</sup> Ex. 3 ("Jakobsson Rebuttal Rpt.").

<sup>5</sup> Ex. 4 ("Klumpp Rebuttal Rpt.").

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1 [REDACTED]  
 2 [REDACTED].<sup>6</sup>  
 3 As explained by Dr. Jakobsson—a computer security expert who has authored dozens of peer-  
 4 reviewed articles and books about computer security<sup>7</sup> and who has served as a computer security  
 5 technologist and researcher at (among other places) Bell Labs, RSA Labs, Xerox PARC, PayPal,  
 6 Qualcomm, and ByteDance in the twenty-six years since he earned his Ph.D. in computer science,  
 7 specializing in cryptography<sup>8</sup>—[REDACTED]

8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED].<sup>9</sup> [REDACTED]  
 12 [REDACTED] “developed ‘kits’  
 13 that can be installed on iOS and Android that intercept traffic for specific sub-domains, allowing us  
 14 to read what would otherwise be encrypted traffic so that we can measure in-app usage (i.e., specific  
 15 actions that people are performing in the app, rather than just overall app visitation).”<sup>10</sup> This was, a  
 16 Facebook executive explained to Meta’s now-COO Javier Olivan, “a ‘man-in-the-middle’  
 17 approach,”<sup>11</sup> [REDACTED].<sup>12</sup>

19 <sup>6</sup> See Jakobsson Rpt. ¶¶ 30-140, Klumpp Rpt. ¶¶ 30-64; *see also* Jakobsson Rebuttal Rpt. ¶¶ 35-159,  
 20 Klumpp Rebuttal Rpt. ¶¶ 85-166.

21 <sup>7</sup> See Jakobsson Rpt. Appx. A at 3-20 (“Publication List”); *see also* Jakobsson Rpt. ¶¶ 23-25.

22 <sup>8</sup> See Jakobsson Rpt. ¶¶ 7-21.

23 <sup>9</sup> See *id.* at ¶¶ 46, 63-69; Ex. 5 (PX 2255) at PALM-016564836 (Zuckerberg: “Whenever someone  
 24 asks a question about Snapchat, the answer is usually that because their traffic is encrypted we have  
 25 no analytics about them. Given how quickly they’re growing, it seems important to figure out a new  
 way to get reliable analytics about them. Perhaps we need to do panels or write custom software. You  
 should figure out how to do this.”).

26 <sup>10</sup> Ex. 6 (PX 414) at 1; *see* Jakobsson Rpt. ¶¶ 77-84.

27 <sup>11</sup> Ex. 6 (PX 414) at 1.

28 <sup>12</sup> See Jakobsson Rpt. ¶¶ 41-43.

**FILED UNDER SEAL****B. Dr. Zervas's Expert Report**

On February 9, 2024, Facebook served the Advertiser Merits Rebuttal Report of Georgios Zervas, Ph.D.<sup>15</sup> This report by Dr. Zervas—a marketing professor at Boston University—purported to respond to certain opinions by Dr. Jakobsson and Prof. Klumpp regarding Facebook's IAAP program, as well as certain other opinions of Prof. Klumpp and Dr. Williams. In Part VI.B. of his report, comprising paragraphs 66-69 (and summarized at paragraph 12), Dr. Zervas opined

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>13</sup> Ex. 7 (PX 2256) at PALM-012863799 (“we look at the analytics end points for the other apps to understand what they care about”); *see* Jakobsson Rpt. ¶¶ 85-105.

<sup>14</sup> *See* Jakobsson Rpt. ¶¶ 101 n.86, 106-12, 125-34; Klumpp Rpt. ¶ 35 n.48, ¶¶ 44-51; Jakobsson Rebuttal Rpt. ¶¶ 110-20; *see infra* at pp. 6-9.

<sup>15</sup> Ex. 8 (“Zervas Rpt.”).

<sup>16</sup> Dr. Zervas [REDACTED]  
*see, e.g.*, Ex. 9 (“Zervas Tr.”) 48:21-49:16; *cf. id.* 50:1-2 (

[REDACTED]. *See generally* Jakobsson Rpt. ¶¶ 96-105; Ex. 10 (PX 26) at PALM-011683734-35 [REDACTED] “Today we are using the Onavo vpn-proxy stack to deploy squid with ssl bump, the stack runs in edge on our own hosts (onavopp and onavolb) with a really old version of squid (3.1).”).

<sup>17</sup> Zervas Rpt. § VI.B.

<sup>18</sup> *Id.* at ¶ 67.

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1 [REDACTED]  
 2 [REDACTED]<sup>19</sup>  
 3 On March 19, 2024, Dr. Zervas was deposed, and revealed his opinions on product design to  
 4 be junk science, failing all four prongs of Federal Rule of Evidence 702. This motion, limited to those  
 5 portions of Dr. Zervas's proposed testimony that are clearly inadmissible, follows.

**ARGUMENT**

6  
 7 Rule 702 states that "[a] witness who is qualified as an expert by knowledge, skill, experience,  
 8 training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates  
 9 to the court that it is more likely than not that: (a) the expert's scientific, technical, or other specialized  
 10 knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the  
 11 testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles  
 12 and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods  
 13 of the facts of the case." Dr. Zervas's opinions regarding product development fail all four of these  
 14 prerequisites.

15 First, despite opining that [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]

21 [REDACTED] For example, Dr. Zervas testified as follows:  
 22 [REDACTED]  
 23 [REDACTED]  
 24  
 25

26 <sup>19</sup> Zervas Rpt. ¶ 68.

27 <sup>20</sup> *Id.* at ¶ 67.

28 <sup>21</sup> *Id.* at ¶ 68.



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[REDACTED]  
[REDACTED]  
[REDACTED]<sup>22</sup>

\* \* \*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>23</sup>

\* \* \*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>24</sup>

\* \* \*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>25</sup>

Dr. Zervas, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]:

[REDACTED]  
[REDACTED]

<sup>22</sup> Zervas Tr. 236:21-237:13 (objections omitted here and throughout this motion).  
<sup>23</sup> *Id.* at 238:1-9 (emphasis added).  
<sup>24</sup> *Id.* at 238:18-239:6.  
<sup>25</sup> *Id.* at 239:21-240:11.



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Year	Percentage
8	30
9	100
10	30
11	100
12	100
13	30

Year	Number of cases
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22

<sup>32</sup> Ex. 14 (PX 2863) [REDACTED]

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1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] inform internal product development.”<sup>33</sup> [REDACTED]  
 5 [REDACTED] “Increas[ing] leadership  
 6 understanding of Snapchat use cases and the need for different Facebook products to address different  
 7 Snapchat use cases. [REDACTED]  
 8 [REDACTED] SC’s  
 9 struggles of late due to competition are likely connected to product efforts I have informed via my  
 10 analysis.”<sup>34</sup>

11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]:

15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]<sup>35</sup>

26 <sup>33</sup> Ex. 15 (PX 20) [REDACTED].

27 <sup>34</sup> *Id.* [REDACTED].

28 <sup>35</sup> Ex. 16 (PX 2989) at PALM-008758432 (boldface in original).

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1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]<sup>36</sup> [REDACTED]<sup>37</sup> [REDACTED]  
 4 [REDACTED]<sup>38</sup> [REDACTED] "IAAP  
 5 Technical Analysis" [REDACTED]  
 6 [REDACTED] "[t]he full data from the analytics service snapchat used" [REDACTED]  
 7 "being sent to [REDACTED] servers for analysis" [REDACTED]  
 8 [REDACTED]<sup>39</sup> [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]<sup>40</sup> [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]<sup>41</sup> [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]<sup>42</sup> [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]<sup>43</sup> [REDACTED]

18 <sup>36</sup> *Id.* at PALM-00875436.

19 <sup>37</sup> *Id.* at PALM-00875435-36; *see also id.* at PALM-00875436 [REDACTED]  
 20 [REDACTED]. A sworn  
 21 statement provided by the CEO of NSO Group [REDACTED] approaching NSO in October 2017 about acquiring Pegasus. *See*  
 22 Ex. 19 (PX 2990) at ¶ 10.

23 <sup>38</sup> *See* Jakobsson Rebuttal Rpt. ¶¶ 75-91.

24 <sup>39</sup> Ex. 7 (PX 2256) at PALM-012863800-01.

25 <sup>40</sup> Zervas Rpt. ¶ 49 n.71.

26 <sup>41</sup> *See* Zervas Tr. 238:18-239:6, 239:21-240:11.

27 <sup>42</sup> *See id.* at 241:17-242:1, 242:21-25.

28 <sup>43</sup> *See, e.g., id.* at 241:7-11 [REDACTED]  
 [REDACTED]; 241:22-25 [REDACTED]

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[REDACTED]

[REDACTED].<sup>44</sup>

**CONCLUSION**

For the foregoing reasons, Advertiser Plaintiffs respectfully request that paragraphs 12 and 66-69 of the Advertiser Merits Rebuttal Report of Georgios Zervas, Ph.D., as well as any related testimony, be excluded.

[REDACTED]

<sup>44</sup> See *Foshee v. Zuniga*, 2021 WL 1947560, at \*6 (N.D. Cal. May 14, 2021) (“Mr. Smith’s proposed statements are at best merely his interpretation of the evidence that may be introduced at trial and at worst entirely misleading characterizations of that evidence.”).

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1 Dated: April 5, 2024

2 **BATHAE DUNNE LLP**

3 By: /s/ Yavar Bathae

4 Yavar Bathae (CA 282388)  
yavar@bathaeedunne.com  
5 Andrew C. Wolinsky (CA 345965)  
awolinsky@bathaeedunne.com  
6 Andrew M. Williamson (CA 344695)  
awilliamson@bathaeedunne.com  
7 Adam Ernette (*pro hac vice*)  
aernette@bathaeedunne.com  
8 Priscilla Ghiță (*pro hac vice*)  
pghita@bathaeedunne.com  
9 445 Park Avenue, 9th Floor  
New York, NY 10022  
10 Tel.: (332) 322-8835

11 Brian J. Dunne (CA 275689)  
bdunne@bathaeedunne.com  
12 Edward M. Grauman (*pro hac vice*)  
egrauman@bathaeedunne.com  
13 901 South MoPac Expressway  
Barton Oaks Plaza I, Suite 300  
14 Austin, TX 78746  
Tel.: (213) 462-2772

15 Allison Watson Cross (CA 328596)  
16 across@bathaeedunne.com  
3420 Bristol St, Ste 600  
17 Costa Mesa, CA 92626-7133

18 *Interim Co-Lead Counsel for the Advertiser Classes*

19 **LEVIN SEDRAN & BERMAN LLP**

20 Keith J. Verrier (*pro hac vice*)  
21 kverrier@lfsblaw.com  
Austin B. Cohen (*pro hac vice*)  
22 acohen@lfsblaw.com  
510 Walnut Street, Suite 500  
23 Philadelphia, PA 19106-3997  
Tel.: (215) 592-1500

24  
25 *Members of Executive Committee for the Advertiser*  
26 *Classes*

**SCOTT+SCOTT  
ATTORNEYS AT LAW LLP**

By: /s/ Amanda F. Lawrence

Amanda F. Lawrence (*pro hac vice*)  
alawrence@scott-scott.com  
Patrick J. McGahan (*pro hac vice*)  
pmcgahan@scott-scott.com  
Michael P. Srodoski (*pro hac vice*)  
msrodoski@scott-scott.com  
156 South Main Street, P.O. Box 192  
Colchester, CT 06415  
Tel.: (860) 537-5537

Patrick J. Coughlin (CA 111070)  
pcoughlin@scott-scott.com  
Carmen A. Medici  
cmedici@scott-scott.com  
Hal D. Cunningham (CA 243048)  
hcunningham@scott-scott.com  
Daniel J. Brockwell (CA 335983)  
dbrockwell@scott-scott.com  
600 W. Broadway, Suite 3300  
San Diego, CA 92101  
Tel.: (619) 233-4565

Patrick J. Rodriguez (*pro hac vice*)  
prodriguez@scott-scott.com  
230 Park Avenue, 17th Floor  
New York, NY 10169  
Tel.: (212) 223-6444

**AHDOOT & WOLFSON, PC**

Tina Wolfson (CA 174806)  
twolfson@ahdootwolfson.com  
Robert Ahdoot (CA 172098)  
rahdoot@ahdootwolfson.com  
Theodore W. Maya (CA 223242)  
tmaya@ahdootwolfson.com  
Henry J. Kelson (*pro hac vice*)  
hkelston@ahdootwolfson.com  
2600 West Olive Avenue, Suite 500  
Burbank, CA 91505  
Tel.: (310) 474-9111

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**FILER ATTESTATION**

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: April 5, 2024

By: /s/ Brian J. Dunne